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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 728

CONGRESS OF INDUSTRIAL ORGANIZATIONS, FLORIDA STATE INDUSTRIAL UNION COUNCIL, ET AL.,
Appellants,

vs.

J. TOM WATSON, AS ATTORNEY GENERAL OF THE STATE OF FLORIDA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA

STATEMENT AS TO JURISDICTION

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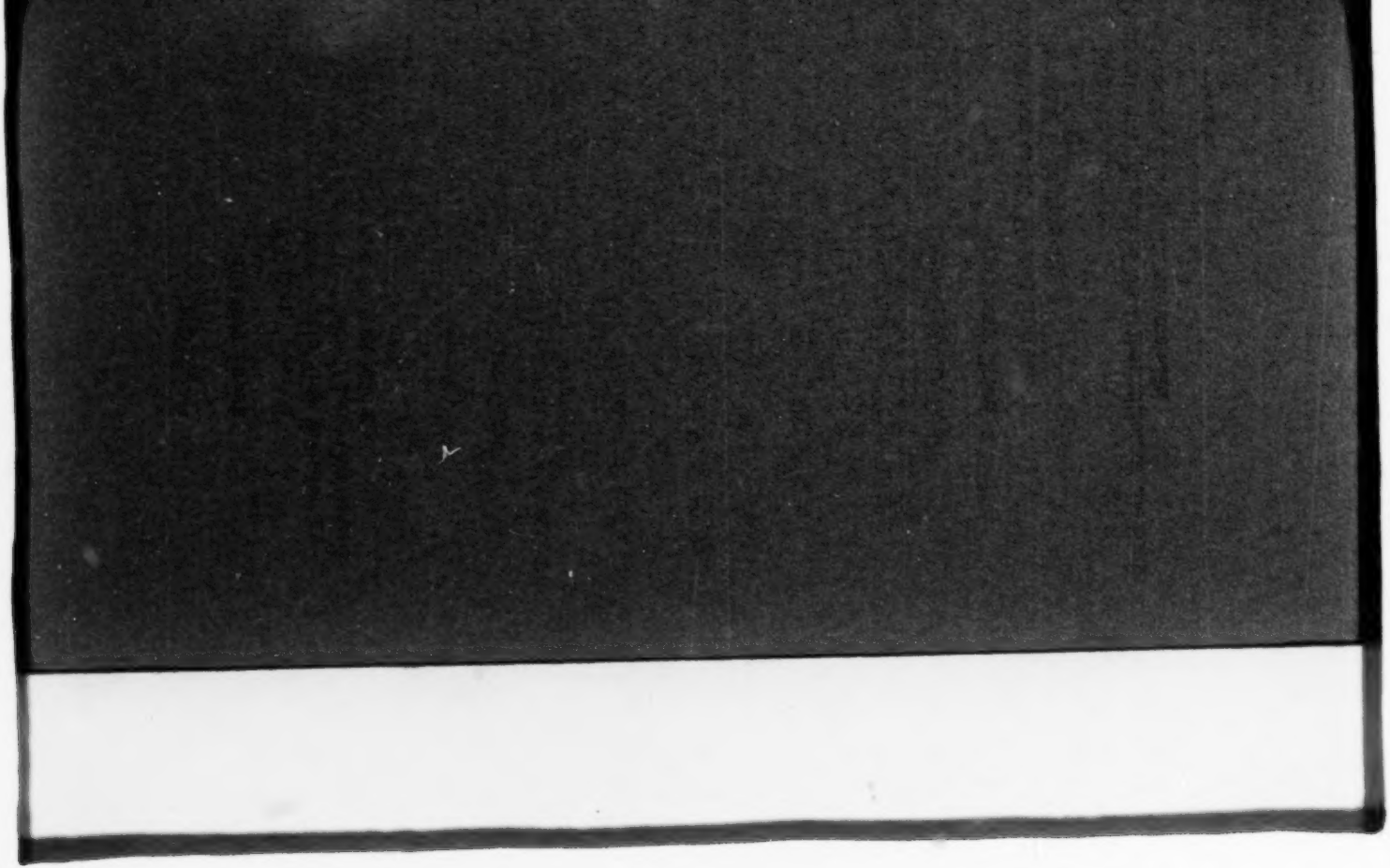

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IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE SOUTHERN DISTRICT OF
FLORIDA, MIAMI DIVISION

CONGRESS OF INDUSTRIAL ORGANIZATIONS, FLORIDA STATE INDUSTRIAL UNION COUNCIL, ET AL.,

Plaintiffs and Representatives of a Class,

vs.

J. TOM WATSON, AS ATTORNEY GENERAL OF THE STATE OF FLORIDA, ET AL.,

Defendants and Representatives of a Class.

STATEMENT IN SUPPORT OF JURISDICTION

Appellants, in support of the jurisdiction of the Supreme Court of the United States to review the above entitled case on appeal, respectfully show:

I

Statutory Provisions Sustaining Jurisdiction

The jurisdiction of the Supreme Court of the United States upon appeal is invoked under Sections 238 and 266 of the Judicial Code as amended by the Act of February 13, 1925, c. 299, Section 1 (43 Stat. 938) (United States Code Ann., Title 28, Sections 345 and 380). The final decree of the Three-Judge District Court was entered September 4, 1945. Application for appeal is herewith presented on the 28th day of November, 1945.

II

The Law of the State Which Is Here Challenged

The law of the State of Florida, involved in this appeal and the validity of which has been upheld by the Three-Judge District Court as not being violative of the Constitution or any law of the United States, is an amendment to Section 12 of the Declaration of Rights of the Constitution of the State of Florida, submitted to the people of the State of Florida for ratification by House Joint Resolution No. 13 of the 1943 regular session of the Legislature of the State of Florida, and ratified by the people of the State of Florida on the 7th day of November, 1944. That portion of the amendment here involved reads as follows:

> "The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization; * * *"

III

Nature of Case and Rulings Below

On November 7, 1944, the State of Florida duly adopted the foregoing amendment to its Constitution, the admitted purpose of which amendment is to outlaw existing and future agreements relating to union security, that is, union-shop (commonly termed "closed shop") agreements, maintenance-of-membership agreements; or any other agreement which requires membership in a labor organization as a condition of employment.

Following public and private threats of civil and criminal prosecutions against labor organizations and employers entering into or continuing to observe non-union security agreements, the announcement by employers that they would not abide by union security provisions in contracts with

appellants, and following the institution of *quo-warranto* proceedings by the Attorney General seeking to revoke the corporate charters of some of the Florida employers who continued to observe the provisions of existing union-security agreements, the appellants herein commenced a proceeding in the District Court of the United States for the Southern District of Florida, Miami Division, under Section 380 of Title 28, U. S. C. A. (Judicial Code, Section 266 as amended), to enjoin the Attorney General from enforcing the law in question on the grounds of its alleged unconstitutionality.

The appellants are the Congress of Industrial Organizations, the Florida State Industrial Union Council and various national and local labor organizations operating in the State of Florida who are parties to or are desirous of entering into union security agreements. Other appellants are officers of such organizations.

The appellees and defendants below are the Attorney General and other officials of the State of Florida charged with enforcement of the law in question.

The Complaint, filed in Miami, Florida, alleged the existence of various union security agreements voluntarily arrived at in the course of collective bargaining, to which agreements various of the appellants, representative of the majority of the employees in appropriate bargaining units and many of them certified as such under Section 9 of the National Labor Relations Act, were parties. The Complaint set forth the acts of the defendants in threatening to terminate said agreements, in preventing the making of such agreements, and the actual bringing of proceedings to terminate such agreements, and also threats of employers who are parties to union security agreements immediately to cancel such agreements because of the threats of the Attorney General and his agents, all of

which was alleged to bring about imminent disruption to Plaintiffs' organization, disturbance to production, and loss of benefits and protections.

The complaint asserted that union shop and union security agreements are indispensable to the functioning of labor organizations and that the right to enter into them constitutes valuable property and civil rights by assuring the appellants and their members:

1. Job security and protection from employer discrimination by removal of motives to discharge or demote because of union activity.

2. Equality of bargaining power, with consequent betterment of working conditions by insuring labor a united front in the contest for a fair share of the joint products of capital and labor.

3. The elimination of competitive inequality by organizing the labor market in such a way as to eliminate the competitive disadvantage obtaining therein when an individual worker is compelled to place a lower price upon his services than one which is collectively bargained for.

4. The elimination of such competitive inequalities not only in a particular plant or industrial area but through as wide a geographic district or territory as the union's bargaining power can make itself felt; the securing through collective bargaining of interstate and industry-wide uniformity in terms and conditions of employment, the elimination of geographic and area wage differentials.

5. Protection of working standards by preventing cutthroat wage competition by non-union employees.

6. Equality of sacrifice by insuring that all who enjoy union wages and working conditions, achieved through years of struggle and deprivation, share in the costs of

such benefits as members of the union rather than "free riders."

7. An increased measure of union responsibility for their obligations under collective bargaining agreements by providing a means of imposing disciplinary action.

8. Elimination of jurisdictional strife by safeguarding against raids and other disruptive tactics of rival labor organizations, and

9. Labor-management cooperation by eliminating the suspicion and hostility which often characterizes the initial stages of employer recognition, thereby freeing union energies and resources for constructive cooperation rather than defensive sparring.

It was alleged that the law in question was (1) an impairment of and obstruction to the right of working people to assemble into and function through labor organizations, protected under the First Amendment as a civil right, (2) an arbitrary, unreasonable and discriminatory exercise by the State of its police power, unlawfully depriving appellants of existing and future contract rights protected under Article I, Section 10 of the United States Constitution and the Fourteenth Amendment thereto, and (3) in conflict with the laws and policies of the United States as expressed in the National Labor Relations Act and the Norris-LaGuardia Act, and thus in violation of Article VI of the United States Constitution. The complaint prayed for a temporary and permanent injunction.

The District Court caused a Three-Judge Court, consisting of Circuit Judge Waller and District Judges Long and Holland, to be assembled. The case was argued before the Three-Judge Court on the 4th day of September, 1945, the court considering the case upon the pleadings under the Attorney General's motion to dismiss. On September 4,

1945, the court entered an order dismissing the complaint, and in connection therewith made the following findings of fact and conclusions of law:

"FINDINGS OF FACT

1. No facts are put in issue by any answer filed in this cause.

2. All allegations of fact, as distinguished from conclusions of law, contained in the complaint are admitted by the motion of the Attorney General to dismiss, and no factual issues necessary to a decision in this cause are involved.

CONCLUSIONS OF LAW

1. The District Court of the United States has jurisdiction of the controversy under Section 41(1) of Title 28, U. S. C. A.

2. The District Court of the United States has jurisdiction of the controversy under Section 41(14) of Title 28 and 43 of Title 8, U. S. C. A.

3. A three-judge Court has jurisdiction under Section 380 of Title 28, U. S. C. A.

4. The amendment to Article 12 of the Declaration of Rights of the State of Florida is not in violation of any provision of the Federal Constitution.

5. Said amendment to said constitution is an appropriate exercise of the police power of the State of Florida.

6. It does not appear on the face of the amendment or on the face of the complaint that said amendment collides with any statute of the United States regulating Labor in interstate commerce, but without deciding that no situations could arise which would result in conflict between

Federal statutes and the said constitutional amendment, we find that such situations are not exhibited herein and that no case is made out for the granting of an injunction against the defendants, or either of them, even if it be conceded that a three-judge Court has the authority to enjoin corporate or individual defendants who are not officers of the State nor charged with the enforcement or execution of the constitutional amendment in question.

7. Whether or not the allegations of the complaint appropriately allege irreparable injury is not necessary to a decision.

8. This case involves the same legal and factual questions as contained in *American Federation of Labor, et al.*, v. *Watson, Attorney General, et al.*, heretofore decided by a three-judge Court of the United States in the Southern District of Florida. The findings of fact in the aforesaid case are hereby adopted as the findings in this case, as are the conclusions of law set forth in said case, found in 60 F. Sup. 1010."

IV

Substantiality of Questions Involved

The questions involved in the appeal are plainly of a substantial nature.

Union security and union shop agreements constitute a long-standing and traditional union objective. The State of Florida has erased the closed shop from the agenda of free collective bargaining between the State's employers and labor organizations. The State has done so, we submit, without a public need therefor and in pursuance of no ascertainable public benefit.

The vital significance of the closed shop as a means of realizing the legitimate goals of working people cannot be overstressed. The closed shop is an indispensable con-

comitant to the exercise by workers of their rights to free assembly, speech and press. By requiring that employees become or remain union members, labor organizations, including appellants, are enabled to achieve that equality or bargaining power which is a basic objective of Federal labor policy. Likewise, through the instrument of the union security agreement, there is eliminated from the employment relationship motives for discharge and demotion, condemned as improper by Federal statute and policy. The protection of working standards, the elimination of competitive inequalities, the assurance of equality of sacrifice, the promotion of an atmosphere which makes possible the realization of the fruits of collective bargaining by removing inducements for attacks upon the union and releasing union energies for administration of the bargaining relationship—all of these are bound up with and the products of union shop contracts, as scores of labor experts have agreed.

To the appellants and their thousands of members, the challenged law presents a threat of formidable dimension, for this law forbids the very bargaining objective which makes collective bargaining possible and fruitful.

If as the court below has contended, there are phases of the activities of labor organizations which are properly subject to commercial regulation then surely labor organizations are entitled to the same constitutional protection as other commercial activities. But, the law here involved denies to labor organizations even the protections with which the Constitution surrounds ordinary commercial enterprises. A labor organization is not free to bar any individual in an appropriate bargaining unit from the benefits of its bargain. See, for example, *Steele* v. *Louisville & N. R. Co.*, 323 U. S. 192. Every individual in the bargaining unit whether a member of the union or not must be treated equally. Yet, the union shop proscription here

involved would compel the labor organization to give to the individuals who receive the benefits of its functioning something for nothing. The challenged law confiscates the right of the trade union through collective bargaining to obtain a return for the service which it renders the employees.

When this confiscation is balanced against the asserted public good achieved through it, it is readily seen that the appellants have been deprived of a valuable right without justification. The State has not attempted to, nor can it, point to conditions which justify outlawing the union shop agreement. On the contrary, the Complaint alleges a lack of abusive practices or conditions arising out of the use of union security agreements in the State. Moreover, even were specific abuses made the basis for the State's action, the State is required to deal economically with the abuse and not destroy the right. For it has long been held by this Court that where it is possible to secure the object sought without impairing essential rights or principles, or without imposing hardship in disproportion to possible benefits, the State is required to exercise its police powers accordingly. See *House* v. *Mayes*, 219 U. S. 270; cf. *Tolliver* v. *Blizzard*, 113 Ky. 773, 137 S. W. 509.

The alleged justification of the law, that the State is safeguarding the "right to work", does not meet this test. If that were the true object of the legislation, it could be accomplished by establishing protections in admissions to and expulsions from labor organizations holding union security agreements.

Just as the phrase "freedom of contract" served as a means in an earlier day of combatting true freedom of contract through equality of bargaining power (see Webb, Sidney and Beatrice, *Industrial Democracy* (1920) 216) so the "right to work" is but the most recent affirmation of

that illusory freedom which years of constitutional and statutory advance have exposed." *

It is appellants' contention that in view of the immeasurable value of the union shop agreement, the Florida law is arbitrary in the extreme and lacks a reasonable basis. As such, therefore, the legislation exceeds the permissible range of the State's police power as prescribed in such cases as *Nebbia* v. *New York*, 291 U. S. 502; *Home Building and Loan Co.* v. *Blaisdell*, 290 U. S. 398, and *West Coast Hotel* v. *Parrish*, 300 U. S. 379.

As we have already noted, the challenged law compels a labor organization to give away its service for nothing. This objection is emphasized when considered in the light of the National Labor Relations Act. Under that Act a union is not free to bargain for its members only and an employer who bargains with a union upon this basis violates that Act. *McQuay-Norris Manufacturing Co.* v. *N. L.*

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* In the hearings on the bill which became the National Labor Relations Act before the Senate Committee on Education and Labor, Professor Robert L. Hale of the Columbia University Law School aptly analyzed the type of freedom of which the State has become the defender:

"If a man wants to work in a steel plant, he does not just go out and work according to his own ideas about how it should be worked; he has to join an organization. Normally, in the case of a steel plant, he becomes an employee of a steel company, and then he has no freedom as to the details of his work whatever; he is a non-voting member of a society. Now, if he belongs to a union in a closed-shop industry, it is perfectly true he has no freedom to work without being a member of the union, but he has a little more freedom through the brotherhood of his union against the restraint imposed upon him by the employer.

"Now, of course, any system of organization is liable to have faults at times. A union itself may possibly have faults, and sometimes it has been oppressive of its members, but it is in any event a choice between evils. Government of any sort has certain evils, or may have at particular times, but the only alternative is anarchy, where the evil would be much greater. If he is subject to be governed by the rules of his union he presumably has a little more control over what those rules are than if he is governed solely by the rules laid down by his employer." Hearings before Committee on Education and Labor on S. 2926, 73d Cong., 2d Sess. (1934) Pt. 1, p. 51.

R. B., 116 F. (2d) 748 (C. C. A. 7), enforcing 21 N. L. R. B. 709. Thus, although the union is not free to disregard the needs of non-members and an employer may not bargain with a union representing its members only, nevertheless, under the Florida law, the union is denied an opportunity to seek a return from those individuals which the law requires it to serve.

A further collision with the National Labor Relations Act is offered by the challenged law. The complaint shows that appellant labor organizations in their bargaining relations lay down terms and conditions of employment for broad interstate areas. See *Thornhill* v. *Alabama*, 310 U. S. 88.

Under the conditions created by modern industry, collective bargaining is not a matter admitting of diversity of treatment from state to state. A bargaining unit may be shaped by the extent of a labor market, by the scope of an employer's plants, by the bounds of a competitive area. The establishment of a particular bargaining unit under the National Labor Relations Act is guided by a determination that it will promote collective bargaining and remove from interstate commerce the causes of industrial disputes.

However, it is obvious that such bargaining units would be denied effectiveness if within a particular geographical portion of such a unit the normal objects of collective bargaining were frustrated. It would obviously defeat the purpose and policy of the National Labor Relations Act if within a single bargaining unit terms and conditions of bargaining were so fixed by local law as to make impossible uniformity throughout the unit. If a law of the type here involved is permitted to stand, the stability which uniformity in bargaining terms necessarily produces would be destroyed. Congress has expressly stated in the National Labor Relations Act that the promotion of collective bargaining and of self-organization is a Federal concern. This

Court in *N. L. R. B.* v. *Hearst Publications,* 322 U. S. 111, has stated with respect to that Act:

> Both the terms and the purposes of the statute, as well as the legislative history, show that Congress had in mind no such patch-work plan for securing freedom of employees' organizations and of collective bargaining. The Wagner Act is federal legislation, administered by a national agency, intended to solve a national problem on a national scale. Cf., e. g. Sen. Rept. No. 573, 74th Cong. 1st Sess. pp. 2-4.

If collective-bargaining is to achieve the objective of removing from interstate commerce the causes of industrial disputes, then the contents and the goal of what is bargained for must be uniform for all employers who are subject to the Federal power. But the National Labor Relations Act would be set at naught if it were a violation of that Act for an employer to refuse to bargain with respect to a closed shop in the State of New York (*National Licorice Co.* v. *N. L. R. B.*, 309 U. S. 350), but not in the State of Florida. If each state is to be permitted to provide employers who are subject to the Federal power operating within the state a defense to a refusal to bargain, the nature of the bargaining obligation under Section 8(5) of the National Labor Relations Act would become completely meaningless. See *Hill* v. *State,* No. 811, October Term, 1944.

It is respectfully submitted that the questions raised under the Fourteenth Amendment and under Article VI, Section 2, of the Federal Constitution are, in themselves, of sufficient substance to warrant this Court to assume jurisdiction. In addition, as is seen from the Complaint appellants have raised questions of importance respecting possible violations of the First Amendment by reason of the

impairment to effective exercise of the rights of assemblage and speech accomplished under the Florida law. (Cf. *Thomas* v. *Collins*, No. 14, October Term, 1944.)

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